



Ministry of
Public Safety and
Solicitor General

Liquor Control and
Licensing Branch

OPERATIONAL BULLETIN No: 06 - 03

April 7, 2006

To: All LCLB staff

This Bulletin replaces No: 05-04

Re: Applicant Suitability Process for Liquor Primary and Liquor Primary Club Applicants (and associated Resident managers and Third party operators) with a Proposed Capacity of 150 Persons or more.

Purpose:

This operational bulletin is to provide an overview of the new workflow process for determining applicant suitability for Liquor Primary¹ (LP) applications with a proposed capacity of 150 persons or more. The intent of the applicant suitability or “fit and proper” policy and procedural change is to implement enhanced criteria for ensuring an applicant or licensee is, and remains, a “fit and proper” person eligible to hold a liquor licence pursuant to Section 16(1) of the Liquor Control and Licensing Act and/or whether or not it is contrary to the public interest to issue, transfer or renew a licence under s.16(3) of the LCLA.

Specifically, this bulletin will:

- Explain the roles of the Senior Licensing Analyst (SLA), Investigators, Registrar, Adjudicators and other involved staff in the enhanced process for determining applicant suitability;
- Advise staff of the new process for a new LP application with a proposed capacity of over 150 in POSSE;
- Introduce the revised “Personal History Summary and Consent for a Criminal Record Search” form that will be implemented initially for LP applicants; and
- Provide staff with an overview of specific processes within the enhanced applicant suitability assessment stage for new LP applications.

¹ Includes new applications and transfers.

It is important to note that any file can be referred to the investigative process, including a Food Primary (FP) or other type of licence, or a third party operator or resident manager application if at any point there are concerns regarding applicant suitability.

Terms of Reference

This bulletin should be read in conjunction with Policy Directive 05 – 05 Applicant and Licensee Suitability Review Process. This Policy Directive provides detailed information on amendments to Licensing and Compliance and Enforcement policies regarding the determination of whether an applicant or licensee is a “fit and proper person” eligible to hold a liquor licence and/or whether or not it is contrary to the public interest to issue, transfer or renew a licence under s.16(3) of the LCLA.

Overview of new processes for Senior Licensing Analysts, Licensing Managers, Investigators, Adjudicators, the Registrar and Deputy General Managers

SLA

- The role and tasks of the SLA will only change with regard to deeming applicants suitable.
- For new Liquor Primary applications, the SLA will check the proposed capacity of the establishment and refer any applications with a proposed capacity of over 150 to an Investigator. Also, the SLA may refer an application to an Investigator if at any point in the licensing process s/he has concerns regarding applicant suitability.
- Once a determination has been made as to applicant suitability, the file will be returned to the SLA to be managed.

Licensing Managers

Licensing managers may make referrals to an Investigator. The manager may refer any type of application, transfer, establishment, licensee (including an agent) or business entity to an Investigator for a background check.

Investigators

- The Investigators' responsibility is to conduct investigations to assist the General Manager in applying the fit and proper policy framework.
- The Investigators are Special Provincial Constables. Their designations are restricted to conducting background checks on applicants and licensees in accordance with the policy framework.
- The type of information and tools used by Investigators to verify applicant information will vary but they will have access to services that verify financial standing, land and property ownership and criminal activity and associations.
- The Investigators are not decision makers with regards to deeming an applicant fit and proper or not—the Investigator can only recognize that there are no issues with regards to fit and proper.

Deputy General Managers

- If, as a result of an investigation any questions arise as to the applicant's suitability, the DGM's will review the Investigator's report and decide whether the application should be referred to an Adjudicator who is a delegate of the General Manager.
- Licensing authority rests with the Deputy General Manager (Licensing).

Registrar's office

- After the DGM's review the staff report they can forward the file to the Registrar's office to arrange a hearing.
- The Registrar sends the package of documents (cover letter, Investigator's report and any other document that will be used in decision making) to the applicant and tracks correspondence between the applicant and the Branch.
- The Registrar arranges and facilitates the hearing process as she would during an enforcement hearing.

Adjudicators (delegates of the General Manager)

- Adjudicators (delegates of the General Manager) will make decisions related to applicant suitability.
- Hearings will only occur when there are disagreements of fact between the Branch and the applicant with regards to the applicant's suitability to hold a liquor license.
- Adjudicators will be assigned to oral hearings on a case by case basis at the discretion of the Registrar. The Registrar may in some cases decide that the Investigator's staff report, along with the applicant's / licensee's written submissions are sufficient for the Adjudicator to make a decision.

Overview of workflow procedures for the applicant suitability assessment for Liquor Primary applications (including transfers) with a current or proposed capacity of 150+ persons or Third party operator or Resident applications associated with an LP with a current or proposed capacity of over 150.

The following outlines the process for determining applicant suitability. It is expected that the procedures will be refined as applications go through the enhanced process.

SLA or other licensing staff has primary responsibility for the file

- The SLA or other licensing staff deems the application complete.
- If the proposed or current capacity of the establishment is less than 150 persons the SLA or other licensing staff continues to process the application by determining applicant suitability according to previous policy. If the proposed or current capacity of the establishment is 150 or greater the SLA refers the file to an Investigator (in the case of other licensing staff the file will be referred to the licensing manager). Exceptions to the referral of a file are if proposed establishments are casinos, stadiums, municipal recreation centres, golf courses, commercial bingo halls, military messes or concert halls.

- In POSSE, SLA or licensing manager refers file to 'higher authority'. The appropriate licensing manager will note on POSSE the referral date and will monitor the timelines. If an applicant sends in the incorrect version of the Personal History Summary and Consent for Criminal Record Search form, the SLA or other licensing staff must request that the applicant complete the correct form before the application can proceed.
- An SLA, or licensing manager, may also refer an application, including an FP or other type of licence, to an Investigator if at any point in the licensing process s/he has concerns regarding applicant suitability.
- The SLA or other licensing staff/ manager photocopies pertinent documents, including CPIC consent forms, corporate documents to send to the Investigator as a working file only. The original application must stay at headquarters. SLA or licensing manager sends the working copy to the assigned Investigator (licensing background checks are assigned to Investigators based on the jurisdiction they have been assigned unless otherwise assigned by the DGM of Compliance and Enforcement).
- SLA or licensing manager is to provide a covering memo with the working file with general details, such as the POSSE job number.
- SLA continues to request site report from C&E Officer as usual. The applicant suitability and site visit will occur concurrently so as to avoid delays.

Investigator has primary responsibility for the file

- Upon receipt of the application file the Investigator enters the relevant information into the tracking sheet and confirms date of receipt of the file with an email to the SLA or licensing manager (whatever the case may be).
- The Investigator has 15 calendar days to verify the information provided by the applicant. If additional time is required, the Investigator is to update POSSE under the tab entitled "Sec 16/18" with the estimated timelines and notify the SLA by email. Generally, while the investigation is in progress, if issues arise that will affect timing, the Investigator should notify the SLA and the Manager of Industry and Local Government Relations.
- Investigator is responsible for obtaining CPIC's (including those from spouses of applicants if applicable). If the CPIC or other criminal record enquiry (PIRS/PRIME) shows activity not declared on the Personal History form the Investigator must contact the relevant police agency to obtain further information on criminal history and also contact the applicant and give him/her an opportunity to disclose any further criminal involvement not included at the time of application.
- The Investigator will use the appropriate tools to determine the accuracy of the information provided by the applicant on the Personal History Summary form (LCLB 0004) as there will be two forms with the same name but for different applicant groups the forms will be distinguished on the end of the form number. The Personal History Summary form used for LP applications will be LCLB0004-LP and the original will be LCLB004.

- To facilitate the background checks the Investigators will cross reference applicant information using:
 - Equifax credit, finance and fraud checking services,
 - BC Online Corporate Registry, BC Assessment, Land Titles and Personal Property searches,
 - police database inquiries, and
 - any other follow up investigation necessary to validate the information provided by the applicant within the scope of informed consent. Follow up may include communication with the applicant to confirm or clarify information.
- Should the Investigator need to request additional information from the licensee, the Investigator copies the SLA on the correspondence.
- Upon completion of the background investigation the Investigator must document and submit the results of the background investigation in one of two ways depending on what is discovered.

A) If the information collected by the application forms, particularly the Personal History Summary form, provided by the applicant is found to be accurate and complete, and there are no issues with regard to applicant suitability, the Investigator must:

- Inform the SLA or other licensing staff by email. Suggested wording is
Re: Application #xxxxxxx
An enhanced suitability check has been conducted on this application. The following persons have been found to be suitable (list relevant individuals associated with application).
- The Investigator must also complete, and submit to the SLA for the file, the checkbox sheet on what types of investigative searches were done and include on the sheet the location of the investigative file for future and FOI reference. The Investigator must also deem the applicant suitable in POSSE by ticking the “applicant eligible” box so the SLA or other licensing staff can send the applicant a letter acknowledging eligibility. The Investigator may also choose to add notes into POSSE at this time.

B) If there are inconsistencies or issues with the applicant(s) or application with regard to “fit and proper” and/or public interest the Investigator must compile a full fit and proper staff report. The Investigator must notify the SLA or other licensing staff by email if s/he anticipates any issues with regard to the application. The report will contain all relevant information gathered during the background check (criminal involvements or associations, compliance history, financial and/or business information, communication with the applicant, and/or additional relevant information from other governmental departments such as health or city licensing). This report is submitted to both the Deputy General Managers (DGM’s). The DGM’s review the report for content and to ensure the issues presented by the Investigator warrant further investigation.

- The DGM's may approve disclosure of the report to the applicant (with or without modifications) or decide the issues do not warrant further attention. If the issues do not warrant further attention the Investigator will return the file to the designated SLA and the regular licensing process will resume.
- Once the investigation is complete and the report has been approved to the satisfaction of the DGM(s) and the DGM(s) agrees it can be disclosed, it is forwarded to the Registrar to send to the licensee so the Registrar can arrange an adjudicated hearing if necessary.
- The Investigator must send the approved report to the Registrar.

Registrar's office has primary responsibility for the file

- When the application is received the Registrar drafts a cover letter for the report.
- The Case Management Administrator (CMA) in the Registrar's office will format and send out the package to the applicant by registered mail and track the date when the package of documents is received by the applicant.
- The cover letter accompanying the Investigator's report offers the applicant the chance to tell the Branch if he/she disputes the information contained in the report and that he/she requests a hearing. If the applicant informs the Registrar that there is a dispute, the Registrar will organize a hearing. The hearing could be oral or by way of written submissions.
- The cover letter instructs the applicant to respond within 15 calendar days and informs him/her that if a response is not received the application will be terminated. The CMA will advise the SLA, in writing, the outcome as to whether the applicant responded or not.
- After the report and hearing request has been sent to the applicant for response there are a couple of possible outcomes. The applicant may choose not to respond at all or the applicant may respond with a submission and/or a request for a hearing. The next part of the process differs depending on the response.
- ***If the applicant does not respond after 15 calendar days*** from when the registered letter was received, the CMA will notify the SLA who will terminate the application. The SLA will prepare a letter informing the applicant the application has been terminated as the Branch was unable to make a complete determination of applicant suitability.
- ***If the applicant responds and requests a hearing.*** If the applicant or licensee indicates that they dispute the report, then the Registrar will organize a hearing. The hearing can take place orally or by way of written submissions. The licensee would probably need more time to prepare a full/complete submission if there is not going to be an oral hearing.
- Legal counsel presents the staff report and applicant suitability information gathered by the Branch during an oral hearing.
- The applicant has an opportunity to present his/her case before the Adjudicator

during the hearing process.

- The Adjudicator makes a decision as to whether the applicant is suitable.
- Decision issued- possible outcomes a) the applicant is fit and proper / the applicant suitability stage of the licensing process is found to be not contrary to the public interest, or b) the applicant is deemed not fit and proper/ the applicant suitability stage of the licensing process is found to be contrary to the public interest.

<i>a) Is fit and proper/ not contrary to public interest</i>	<i>b) Is not fit and proper/ contrary to public interest</i>
<ul style="list-style-type: none"> • Adjudicator decides no fit and proper/ public interest issues exists. • Applicant is notified in writing of the hearing decision (by Adjudicator via CMA). • File is returned to case manager. • Applicant is notified that s/he is deemed suitable (or the application is not contrary to the public interest by way of an eligibility letter sent by the Licensing Case Manager. • The responsibility for the application will then return to the SLA or licensing manager/supervisor and the regular licensing process. 	<ul style="list-style-type: none"> • Adjudicator decides applicant is not fit and proper and/or the application is contrary to the public interest. • Applicant is notified of the decision. If the hearing is a current licensee (and involves a transfer or renewal) the Adjudicator will make the licensing decision and notify the licensee. If the hearing involves an applicant the Adjudicator will notify the SLA or licensing manager/supervisor responsible for the file. • CMA will make an insert for the file stating 1) the file went through a fit and proper hearing process; 2) the date and outcome of the hearing; 3) the name and date of birth of the individual under review; and 4) the location of the investigators file for future reference. • CMA returns file to Licensing Case Manager. • Licensing Case Manager updates POSSE.

Clarification needed?

See also Operational Bulletin 05-05: Interim Renewals During Fit & Proper Reviews.

Questions or clarification regarding these changes in operational procedures should be directed to Pat Sarsfield Manager of Local Government Relations or Mark Tatchell Deputy General Manager of Compliance and Enforcement by internal email.

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